



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

April 24, 1991

Mr. Thomas W. Smith
Chief of Police
Gun Barrell City Police Dept.
1812 W. Main
Gun Barrell City, Texas 75147

OR91-213

Dear Mr. Smith :

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11469 .

The Gun Barrel City Police Department received an open records request for the offense report of an alleged criminal trespass of the office of the city secretary. The criminal investigation of this matter has been closed due to the county attorney's refusal to prosecute the case. You contend that except for the front page of the offense report and a brief narrative, the report comes under the protection of sections 3(a)(1) and 3(a)(8) of the Open Records Act.

Whether section 3(a)(8), the law enforcement exception, applies to particular records depends on whether their release would "unduly interfere" with law enforcement or prosecution. Open Records Decision Nos. 434 (1986); 287 (1981). Generally, all information pertaining to *pending* criminal litigation may be withheld unless the information is found on the front page of the offense report. See *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Where a criminal investigation has been closed, however, the determination to withhold information pursuant to section 3(a)(8) must be made on a case-by-case basis. Open Records Decision No. 216 (1978) (copy enclosed).

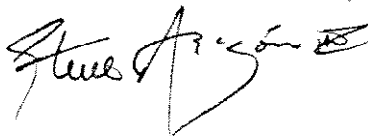
Of the factors listed for consideration in Open Records Decision No. 216, only two are of possible relevance here: the harmful disclosure of the identities of informants and the possible intimidation or harassment of witnesses. In this instance, you indicate that you wish to protect the handwritten statements of the complainant and the narrative portion of the report. The identity of the complainant, the Mayor of Gun Barrel City, has been re-

leased to the requestor; this information is in fact normally found on the front page of the offense report and is therefore public information. *See* Open Records Decision No. 127 (1976). You have not indicated to this office, nor is it apparent from the content of the statement, why intimidation or harassment of the complainant would likely result from the release of either the complainant's statement or the narrative. Consequently, section 3(a)(8) does not protect this information.

You next contend that section 3(a)(1) of the Open Records Act, pursuant to the informer's privilege, excepts from public disclosure the complainant's statement. We note, however, that the informer's privilege does not apply when the informant's identity is known to the party complained of. *See* Open Records Decision No. 208 (1978). Because the identity of the complainant is public information, his statement does not in this instance come under the protection of the informer's privilege. Consequently, the requested information must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-213.

Yours very truly,

A handwritten signature in black ink, appearing to read "Steve Aragon", with a stylized flourish at the end.

Steve Aragon
Assistant Attorney General
Opinion Committee

SA/RWP/lb

Ref.: ID# 11469
ID# 12064

Enclosures: Open Records Decision No. 216
Submitted documents